IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.2737 (MS) OF 2001

(Old No. 354 of 1989)

Swami Krishna Nand Ji,
Chela Swami Shankar Nand,
R/o Radha Krishna Mandir,
1 Pushkar Road, Rishikesh,
District-Dehradun. .....Petitioner.

Versus

1. IIIrd Additional Civil Judge, Dehradun.
2. Smt. Vimla Devi, W/o Name not known, R/o Care of Prapann Medical Hall, Dehradun Road, Rishikesh, District-Dehradun.
3. Sri Kishan Lal Panwala, S/o Sri Durga Singh, R/o Dehradun Road, Rishikesh, District-Dehradun.

.....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri V.M. Pingal, advocate for the petitioner and none for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 7th October, 1988 by which the amendment has been refused.

Briefly stated, the petitioner has filed the suit being Suit No. 70 of 1982 against Smt. Vimla and Sri Kishan Lal for removal of obstruction from the disputed land and restraining the respondents not to interfere in making further construction and interfering in any manner in the peaceful possession of the petitioner.

The respondents filed a written statement. The suit was dismissed on 18.09.1982 by the IIIrd Additional Munsif Dehradun.

Aggrieved by the said order, the petitioner preferred a Civil Appeal No. 21 of 1982 before the District Judge, which was transferred before the respondent no. 1.

During the pendency of the appeal, the petitioner moved an amendment application, which was rejected on the ground that it would change the nature of the suit.

Proviso to Order 6 Rule 17 of the Code of Civil Procedure reads as under:-

"[17. Amendment of pleadings. *–The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties :*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of the due diligence, the party could not have raised the matter before the commencement of trial.]"

Since during the pendency of the appeal, the application for amendment has been filed, therefore, in view of the proviso to order 6 Rule 17 of the Code of Civil Procedure, it will not be possible to allow the amendment at this stage. However, since the petitioner himself is the plaintiff, it will always be open for him to prove his title and for that purpose no amendment is required.

By way of amendment, the petitioner wants to implead the party. Proper impleadment of party is contained under Sub clause (2) of Order X Rule 2. It reads as under:-

"[2. Oral examination of party, or companion of party.-(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied."

Since the petitioner wants to implead the party in the suit, it will be open for the appellate Court to look into the matter at any stage of the proceedings and if considers that the suit is bad for non-joinder of the party, the petitioner may be permitted to add the party in accordance with the sub-clause (2) of Order X Rule 2 of the C.P.C.

Subject to the aforesaid, writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

08.08.2006

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